



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

Public

August 16, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Morales Bloch, Esq.
NYS Department of Health
145 Huguenot Street
New Rochelle, New York 10801

Lisa Gail Aptaker, M.D.
50 West 97th Street – Apartment 4G
New York, New York 10025

RE: In the Matter of Lisa Gail Aptaker, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-188) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

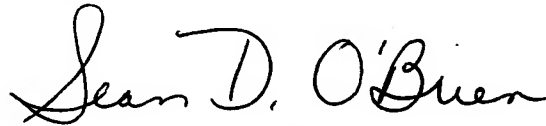
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in cursive script that reads "Sean D. O'Brien". The signature is written in dark ink and is positioned above the printed name and title.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

**IN THE MATTER
OF
LISA GAIL APTAKER, M.D.**

DETERMINATION

AND

ORDER

BPMC #06-188

COPY

MICHAEL R. GOLDING, M.D., Chairperson, **ANTHONY CLEMENDOR, M.D.** and **NEAL J. HURWITZ, ESQ.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, served as Administrative Officer for the Hearing Committee. The Department of Health appeared by **DONALD P. BERENS, Jr.**, General Counsel, **CLAUDIA MORALES BLOCH, ESQ.**, Associate Counsel, of Counsel. The Respondent appeared **Pro Se**. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

STATEMENT OF CHARGES

The accompanying Statement of Charges alleged (5) specifications of professional misconduct, including allegations of fraudulent practice, failure to comply with an Order of the State Board of Professional Medical Conduct to submit to a psychiatric examination and having her application for a medical license refused in another jurisdiction. The charges are more specifically set forth in the Amended Statement of Charges dated March 27, 2006, a copy of which is attached hereto as Appendix I and made a part of this Determination and Order. The original Statement of Charges was amended pursuant to an Order of the Supreme Court, New York County dated March 13, 2006. The Hearing Committee dealt with the Charges as amended and did not view the original Statement of Charges.

SUMMARY OF PROCEEDINGS

Notice of Hearing Date:	March 27, 2006
Pre-Hearing Conference	April 19, 2006
Hearing Dates:	May 2, 2006
	May 16, 2006
	May 31, 2006

WITNESSES

For the Petitioner:

Lisa Gail Aptaker, M.D.
Tonia Dandridge
Capt. James Jones

For the Respondent:

Lisa Gail Aptaker, M.D.

FINDINGS OF FACT

1. Respondent was licensed to practice medicine in the State of New York on or about June 1, 1999. On her initial application for a license, all written communications with the NYS Education Department, Professional Licensing Service, and on her registration renewal document, Respondent has reported her address as 50 West 97th Street, Apt. 4G, New York, N.Y. 10025. Further, Respondent testified that said address has always been her permanent address and that both she and her mother have access to the mail box. (Ex. 3, T. 74, 145-146, 159-160, 162, 182, 197)
2. Respondent testified that she was advised, on more than one occasion, to have an attorney represent her at the instant proceeding. (ALJ Ex. 4, T. 87-88, 90-91)

FAILURE TO COMPLY WITH A PHL Sec. 230(7) ORDER OF THE BOARD

3. On or about December 28, 2004, Respondent was sent, via certified mail, a letter, which, pursuant to the provisions of PHL Sec. 230(7), provided Respondent with notice that a 230(7) proceeding would be held on January 19, 2005, for a Hearing Committee of the Board for Professional Medical Conduct to meet and review information had by the OPMC (Office of Professional Medical Conduct) and to determine whether that Hearing Committee had reason to believe that Respondent may be impaired by reason of a mental/psychiatric disability and whether, if such a finding was made, to direct Respondent to submit to a

medical and/or psychiatric examination. A copy of the letter was sent to counsel representing the Respondent at the time, Bruce Gilpatrick, Esq. Respondent acknowledged receipt of the notice. (T. 76-78)

4. On or about January 6, 2006, Mr. Gilpatrick notified counsel for the Department (Ms. Bloch) that he no longer represented Respondent, and that another attorney, Kenneth Larywon, Esq. would assume representation of the Respondent. (T. 76-83)

5. On or about January 10, 2005, counsel for the Department received a letter from Mr. Larywon, stating that he, too, would no longer represent Respondent. Respondent acknowledged receipt of these letters from Mr. Larywon. (T. 83-84, 92)

6. Respondent appeared at the 230(7) proceeding, on January 19, 2005, pro se. (T. 93, 438-441)

7. On January 19, 2005, Respondent informed the 230(7) Hearing Committee that she had been granted a military commission. She also stated, notwithstanding a previous adjournment request, that she was supposed to have reported for duty two days prior, on January 17, 2005, to Fort Sam Houston, Texas, U.S. Army Medical Department Center and School for training. Respondent never informed the Department of any of this before the 230(7) hearing. (Ex. 8m, T. 97- 100)

8. At the conclusion of the 230(7) proceeding on January 19, 2005, the Hearing Committee issued an Order wherein they "found reason to believe that the [Respondent] may be impaired by mental or psychiatric disability," and directed the Respondent to submit to a

psychiatric examination by Zev Wm. Labins, M.D. The Order further provided that the examination with Dr. Labins shall commence no later than February 18, 2005, and stated that, "pursuant to N.Y. Educ. Law Section 6530(10), a failure to comply with the Order is professional misconduct." (Ex. 4, T. 101)

9. Immediately after the conclusion of the proceeding and on January 19, 2005, Respondent was handed a copy of the 230(7) Order and met with Ms. Bloch, Roy Nemerson, Deputy Counsel and Pat Cooney, MARO Regional OPMC Director, who explained the order and Respondent's obligations under it. Respondent was also advised, on a subsequent occasion, by Ms. Bloch, in writing, of the Order and her obligations under it. (Ex. 4, 4a, 10, T. 101-103)

10. Respondent reported to the U.S. Army base at Fort Sam Houston, Texas (the base) on or about January 22, 2005. Respondent testified repeatedly, during direct testimony by Ms. Bloch, on cross-examination, in response to this Hearing Committee's questions and on her presentation of a defense that, upon arriving at the base, she immediately went to both the JAG office and to her commanding officer, Captain James J. Jones, with a copy of the 230(7) order along with "all the paperwork in connection with the investigation in New York." She further testified that, as a result of revealing the 230(7) Order and the facts of the OPMC investigation to Captain Jones, he sent a letter to both New York and Florida Medical Boards, dated February 3, 2005, seeking to invoke the Service Members Civil Relief Act

(SMRA) on her behalf. Respondent further testified that, on more than one occasion, she specifically asked Captain Jones if he wanted her to submit to a psychiatric examination, to which he "emphatically said no." (Ex. I; T. 104-107, 113, 116, 119, 131, 135-137, 139s, 143-144, 183-187, 276)

11. The SMRA, if applicable, provides for a 90 day stay of a non-military action against military personnel. Since the letter requesting such relief was issued on February 3, 2005, the 90 day period ran on or about April 3, 2005. Respondent testified that she again spoke to Captain Jones at that time and reiterated her willingness to voluntarily undergo a psychiatric examination, to which Captain Jones, again, "emphatically said no." (T. 118-120)

12. Captain Jones, who is currently serving as a physician assistant at Fort Knox Army recruiting command, testified that he wrote the letter, dated February 3, 2005, to the OPMC and the Florida Board, invoking the SMRA, based upon Respondent's representation to him that she had malpractice cases pending in both states that she wanted deferred until after her basic training. Given that Respondent was an Ob- Gyn, and malpractice cases are not uncommon, he did not question her explanation and had her obtain a letter for his signature from the JAG office. He was not, at any time up to and including the time of her discharge, made aware of the existence of the 230(7) Order, nor the actual nature of the OPMC investigation concerning Respondent. Captain Jones testified that Respondent continually denied that there was any issue whatsoever with OPMC and never revealed that she had an outstanding order to submit to a psychiatric evaluation. In fact, Captain Jones only learned

of said Order a day or two prior to testifying before this Hearing Committee. Captain Jones further testified that if he had known of the Order, he would have recommended that she return to New York to comply with the directive for a psychiatric examination. (Ex. 8; T. 370, 406-407, 413-414)

13. Captain Jones testified that Respondent not only never volunteered to undergo a psychiatric examination, but specifically denied any issues concerning her license in New York State. (T. 371-374, 413- 414)

14. As part of her direct questioning of Captain Jones, Ms. Bloch quoted sections of the transcript from Respondent's testimony, as set forth in F/F #10, and asked him whether or not the events Respondent claimed had occurred, actually happened and/or were true. In each instance, Captain Jones testified that Respondent's statements to the Hearing Committee were false. (T. 371-374, quoting from T. 119 & 276)

15. Captain Jones testified that, despite numerous contacts with Department personnel by military lawyers and himself, in an attempt to ascertain Respondent's status with OPMC, the Department would not release any information concerning its investigation nor the existence of an outstanding 230(7) Order. Further, the Army's "Recommendation for Student Action," (Ex. 8h) has a written note which states: "Florida license denial is attached. Facts regarding NY is not available." (Ex. 8h, T. 380)

16. Respondent admits that she never met with Dr. Labins, not even upon her discharge from the Army and return to New York in June, 2005. Respondent acknowledged that she knew the Order was still in effect. Specifically, upon questioning by this Hearing Committee, Respondent did affirmatively state that, in part, what brought her to the instant hearing was her failure to comply with the Order, as alleged by the Department. (Ex. 5, T. 120-122, 124-125, 137, 142-144, 516-518)

17. Respondent acknowledged that she never made "any formal requests or attempts to contact" Dr. Labins. (T. 121) The Hearing Committee accepts the statement made by Dr. Labins, in evidence as Ex. 5, that Respondent never contacted him. (Ex. 5; T. 130-131)

FLORIDA APPLICATIONS FOR LICENSE & ORDER OF DENIAL

18. On or about June 17, 2003 (6/17/03), Respondent completed, signed and submitted an application for a medical license with the Florida Department of Health, Board of Medicine (Florida Board). (Ex. 7)

19. Question 29 of the 6/17/03 application asked: "Have you ever had any staff privileges denied, suspended, revoked, modified, restricted, placed on probation, asked to resign or asked to take a temporary leave of absence or otherwise acted against by any facility?" Respondent answered "No" to the question. (Ex. 1, para. C(1); 7)

20. Question 30 of the same application asked: "Have you ever been asked, or allowed to resign from any facility in lieu of disciplinary action or during any pending investigations into your practice?" Respondent answered "No" to the question. (Ex. 1, para. C(2); 7)

21. On or about September 1, 2005, Respondent's 6/17/03 application for licensure in Florida was denied based upon findings that she had knowingly misrepresented and concealed material facts in her licensure application, in her subsequent oral statements to the Florida Board and during her PRN (Professional Resource Network) [psychological] evaluation. The order stated that Respondent's answers to Questions 29 and 30 on the application concealed the adverse circumstances surrounding her resignation from Harlem Hospital. (Ex. 6, see pgs. 37-39, 44)

APPLICATIONS FOR A COMMISSION IN THE U.S. ARMY

22. On or about April 29, 2004, and then again, on or about November 17, 2004, as part of the application process for a direct commission in the United States Army (Army), Respondent completed, signed and submitted a Personnel Data Sheet (Data Sheet). As part of the November 17, 2004 process, Respondent also completed, signed and submitted a Security Clearance Application (Clearance App.). [Ex. 8j (11/17/04 Clearance App.), 8k (4/29/04 Data Sheet), 8l (11/17/04 Clearance App.)]

23. Respondent entered the Army on or about January 22, 2005. (See F/F #10, supra)

24. On or about March 17, 2005, Respondent was given notice, by the Army, of a "recommendation for nonacademic relief, involuntary release from active duty, and termination of U.S. Army commission," based upon allegations that she had failed to be truthful and to disclose pertinent information during her initial entry process and applications submitted on April 29, 2004 (4/29/04) and on November 17, 2004 (11/17/04). (Ex. 8i)
25. On or about May 24, 2005, a hearing was held before a Faculty Board of the Army. Respondent was represented by counsel and had a full and fair opportunity to be heard. (Ex. 8d)
26. On or about June 17, 2005, a Final Decision of the Commander, U.S. Army Medical Department Center and School (Final Decision) was entered, approving the findings and recommendations of the Faculty Board concerning Respondent, in that, Respondent was found "to knowingly make false statements with the intent to mislead or deceive by her answer" to questions posed on her Data Sheets of 4/29/04 and 11/17/04 and on her Clearance App. of 11/17/04, as set forth more fully below. [Ex. 8a, 8b (Final decision and memorandum of the Commander), 8c (Faculty Board Findings and Recommendations)]
27. The Department of the Army found that " [Captain] Aptaker was required to appear before the Florida Department of Health, Board of Medicine, concerning her health status as an impaired, hindered, or otherwise restricted practitioner, on 6 December 2003, after having received notice that she was required to appear" . (Ex. 8c, p. 6 Par. II (A) (Faculty Board Findings and Recommendations))

28. The Department of the Army found that Respondent failed to be truthful and, knowingly, with the intent to mislead or deceive, falsely answered "No" to Question 10(d) of the 4/29/04 Data Sheet, which asked: "Have you ever been required to appear before a medical or state regulating authority, regardless of the result, concerning your health status as an impaired, hindered, or otherwise restricted practitioner?" [Ex. 1 para. D(1)(a); 8k, pg. 2, (Data Sheet), 8c (Findings, pg. 1, para. A-E, F(1)(a)]

29. The Department of the Army found that Respondent failed to be truthful and, knowingly, with the intent to mislead or deceive, falsely answered "No" to Question 11(c) of the 4/29/04 Personnel Data Sheet, which asked: "Have you ever had professional privileges denied, withdrawn, or restricted by any health care facility?" [Ex. 1, para. D(1)(b); 8k, pg. 3 (Data Sheet), 8c (Findings), pg. 1, para. A-E, pg. 1-2 F(1)(b)]

30. The Department of the Army found that Respondent failed to be truthful and, knowingly, with the intent to mislead or deceive, falsely answered "No" to Question 11(d) of the 4/29/04 Personnel Data Sheet, which asked: "Have you ever been asked to resign from a facility or organization staff or professional society?" [Ex. 1, para. D(1)(c); 8k, pg. 3 (Data Sheet), 8c (Findings), pg. 1, para. A-E, pg. 1-2 F(1)(c)]

31. The Department of the Army found that Respondent failed to be truthful and, knowingly, with the intent to mislead or deceive, falsely answered "No" to Question 10(d) of the 11/17/04 Data Sheet, which asked: "Have you ever been required to appear before a medical or state regulating authority, regardless of the result, concerning your health status as an impaired, hindered, or otherwise restricted practitioner?" [Ex. 1, para. D(2)(a); 8l, pg. 2, (Data Sheet), 8c (Findings), pg.1, para. A-E, pg. 1-2, F(2)(a)]

32. The Department of the Army found that Respondent failed to be truthful and, knowingly, with the intent to mislead or deceive, falsely answered "No" to Question 11(c) of the 11/17/04 Personnel Data Sheet, which asked: "Have you ever had professional privileges denied, withdrawn, or restricted by any health care facility?" [Ex. 1, para. D(2)(b); 8l, pg. 3 (Data Sheet), 8c (Findings), pg. 1, para. A-E, pg. 1-2 F(2)(b)]

33. The Department of the Army found that Respondent failed to be truthful and, knowingly, with the intent to mislead or deceive, falsely answered "No" to Question 11(d) of the 11/17/04 Personnel Data Sheet, which asked: "Have you ever been asked to resign from a facility or organization staff or professional society?" [Ex. 1, para. D(2)(c); 8l, pg. 3 (Data Sheet), 8c (Findings) pg. 1, para. A-E, pg. 1-2 F(2)(c)]

34. The Department of the Army found that Respondent failed to be truthful and, knowingly, with the intent to mislead or deceive, falsely answered "No" to Question 19 of the 11/17/04 Clearance App., which asked: "In the last 7 years, have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?" [Ex. 1, para. D(3)(a); 8j, pg. 6 (Clearance App.), 8c (Findings) pg. 1, para. A-E, pg. 1-2 F(3)(a)]

35. The Department of the Army found that Respondent failed to be truthful and, knowingly, with the intent to mislead or deceive, falsely answered "No" to Question 20 of the 11/17/04 Clearance App., which asked: "Has any of the following happened to you in the

past 7 years? -Fired from job -Quit a job after being told you'd be fired -Left a job by mutual agreement following allegations of misconduct -Left a job by mutual agreement following allegations of unsatisfactory performance -Left a job for other reason under unfavorable circumstances." [Ex. 1, para. D(3)(b); 8j, pg. 6 (Clearance App.), 8c (Findings) pg. 1, para. A-E, pg. 1-2 F(3)(b)]

CONCLUSIONS OF LAW

Respondent is charged with five (5) specifications alleging professional misconduct within the meaning of Education Law § 6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but do not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence and the fraudulent practice of medicine.

The following definitions were utilized by the Hearing Committee during its deliberations:

Fraudulent practice is the intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine. The Hearing Committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. The licensee's knowledge and intent may properly be inferred from facts found by the Hearing Committee, but the Committee must specifically state the inferences it is drawing regarding knowledge and intent.

Using the above-referenced definition as a framework for its deliberations, the Hearing Committee concluded, by a preponderance of the evidence, that (3) three of the five (5) specifications of professional misconduct should be sustained. The rationale for the Hearing Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of deliberations, the Hearing Committee made a determination as to the credibility of various witnesses presented by the parties.

Tonia Dandridge, Senior Medical Conduct Investigator testified for the Department. The Hearing Committee finds her to be a credible witness regarding her contact with Respondent. The Department also offered the testimony of Captain James Jones, a physician assistant program manager for the United States Army. In January 2005, Captain Jones was in command of the company in Fort Sam Houston, Texas that provided administrative and command control support to officers that were in training at the army medical department

center school. He invoked the Servicemembers Civil Relief Act on behalf of Respondent in a letter to the Department dated February 3, 2005. (Resp. Ex. I; T. 360-362) The Hearing Committee finds Captain Jones to be a totally credible and unbiased witness who has no stake in the outcome of these proceedings. The Hearing Committee believes his testimony that Respondent never advised him that she was under an Order for a psychiatric examination in New York. (T.365-366)

Respondent was not only called by the Department as one of its witnesses but also took the stand on her own behalf. The Hearing Committee finds that Respondent deliberately lied to them when she testified that she had been up-front with the Army about the New York Board's Order for the psychiatric examination. They also find as incredible her testimony that she did not receive the Department's notices or letters that were sent to her permanent address in New York City where she resides with her mother. They are further troubled by Respondent's allegation that the Department has set out to ruin her career with "a discriminatory pattern of activity against a non-white woman of poor background" (T. 278). This statement is contradicted by Respondent's application to the State of Florida where she checked off that she was "Caucasian". (Ex. 7, p. 3; T. 462)

The Hearing Committee however, is concerned with the issue raised by Respondent over the falsity of the affidavit of Dr. Fricchione.(Ex. 12) At the outset of the hearing, Respondent offered a very favorable recommendation letter by Dr. Donald A. Fricchione from St. Michael's Medical Center. (Ex. F) On the second day of hearing (May 16, 2006), the Department put into evidence an affidavit of the same Dr. Fricchione in which he denied in very strong language ever writing and signing a favorable recommendation on behalf of Respondent.(Ex. 12) At the outset of the third day of hearing (May 31, 2006), Respondent introduced a statement by the custodian of the records at St. Michael's that the favorable recommendation letter by Dr. Fricchione had indeed been written and signed by him. The custodian also produced a retained copy of that letter. (Ex. 13, T. 456, 521-522) It appears to the Hearing Committee that Dr. Fricchione's affidavit introduced by the Department was false. The Hearing Committee is obviously concerned and troubled by what happened above.

The Hearing Committee is further troubled about how information from New York sent "anonymously" made its way to the Florida Board of Medicine. (Ex. 6, p. 32 of Recommended Order) They believe that this information was harmful to Respondent and had a direct impact on the Florida proceedings.

The Board finds, however, that these events do not justify Respondent's pattern of narrowly defining issues to suit her purposes. As a result, the Hearing Committee finds that Respondent's overall testimony was not credible and it should be given little weight.

FRAUDULENT PRACTICE

Factual Allegations C, C.1, and C.2: NOT SUSTAINED

Factual Allegations D and D. 1(a): SUSTAINED

D.1(b) : NOT SUSTAINED

D.1(c): SUSTAINED (Vote 2 to 1)

D.2(a) : SUSTAINED

D.2 (b) : NOT SUSTAINED

D.2(c): SUSTAINED (Vote 2 to 1)

D.3(a): SUSTAINED (Vote 2 to 1)

D.3(b): SUSTAINED (Vote 2 to 1)

With respect to Charge C.1 , the Hearing Committee finds no convincing evidence in the record before them to support this Charge. They find that the events that occurred at Harlem Hospital are not clear cut and that subsequent events and information supplied by Respondent have diminished the weight of the findings of the Florida Board. The Hearing Committee notes that Respondent was offered a position and worked at Long Island College Hospital right after she left Harlem Hospital. They believe that this would not have occurred if she had left Harlem Hospital under a forced resignation. They also note that follow up phone calls by the Florida Board to Harlem Hospital indicate that Dr. Henry, the Medical Director acknowledged a personality conflict between Respondent and her attending supervisor, but he did not fault Respondent. (Ex. 6 p. 30 of Recommended Order, Facts 85-

88) The Hearing Committee also finds that nearly one year after the incident at Harlem Hospital, Respondent received two letters of positive recommendation from her former colleagues at Harlem Hospital. (Ex. F) The Hearing Committee believes that it is not their purpose to re-litigate this matter, but the findings of the Florida Board, upon which the Department has heavily relied, are not persuasive to sustain Charge C.1 when viewed against the entire record.

With respect to Charge C.2, the Hearing Committee found no evidence in the record before them that disciplinary action or pending investigations had been started in New York State on or before June 23, 2003, which is the date that this particular question was answered by Respondent on the Florida application. Therefore, they find that it was not fraudulent for her to answer "No" to this question.

The Hearing Committee is troubled how "anonymous" information was faxed to Dr. Raymond Pomm, the Medical Director of the Professionals Resource Network (PRN) evaluation program in the State of Florida. The information contained documentation from an investigative committee of the New York State Department of Health, Office of Professional Medical Conduct. The Hearing Committee finds that this practice has "polluted" the investigation of some of the charges in this matter.

With respect to Charge D.1(a) and D.2 (a) the Hearing Committee finds that Respondent deliberately concealed the fact on two of her military applications (April 29, 2004 and November 17, 2004) that the State of Florida had required to her appear before their Board of Medicine "concerning her health status as an impaired, hindered, or otherwise restricted practitioner." She gave no explanation whatsoever regarding her participation in

Florida's PRN evaluation program and it is inferred by this Committee that she deliberately intended to conceal this information from the U.S. Army on two separate occasions.

With respect to Charge D.1(b) and D.2(b), the Hearing Committee does not sustain these charges because it is their belief that although Respondent had initially been asked to resign by Dr. Matseoane, the Chair of the OB-GYN Department at Harlem Hospital, subsequent events and information diminish the Department's allegation. (See discussion for Charge C.1 Supra) As a result, the Hearing Committee concludes that Respondent's answer to these questions did not rise to the level of fraud and these charges are not sustained.

With respect to Charges D. 1 (c) and D.2 (c) again, the Hearing Committee believes that Respondent should have provided an explanation of the circumstances under which she left Harlem Hospital but they do not believe these answers are tantamount to fraud. As a result, the Hearing Committee sustains the Second and Third Specifications for Fraudulent Practice only for lying on the military application.

FAILURE TO COMPLY WITH AN ORDER

Factual Allegations Paragraph A: SUSTAINED

The Hearing Committee finds that Respondent totally disregarded the OPMC Order directing her to submit to a psychiatric examination. Whether she agrees with it or not, Respondent should have contacted Dr. Labins and arranged for an evaluation. She has had ample time to comply and has elected to knowingly and wilfully disregard the Order of the

Board. Therefore, the Hearing Committee sustains the Fourth Specification of misconduct.

APPLICATION FOR MEDICAL LICENSE REFUSED

Factual Allegations Paragraph B: NOT SUSTAINED

The Hearing Committee does not sustain this Specification because it is solely based on the allegations in Charges C.1 and C.2. , which were not sustained. See discussion for Charges C.1 and C.2 Supra.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent's license to practice medicine in New York State should be suspended for a period of six (6) years following the effective date of this Determination and Order. Respondent's license will be suspended outright for the first four (4) years. The suspension shall be stayed for the final two (2) years of the suspension and Respondent will be placed on a general probation with the requirement that she submit to a psychiatric evaluation by a physician selected by OPMC. The complete terms of probation are attached to this Determination and Order as Appendix II. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interests of justice.

The Hearing Committee did not vote to revoke Respondent's license because based upon the record before them, she has caused no threat of harm to patients. They are also concerned about flaws in the Department's case that included the information leaked to the Florida Board and the false affidavit by Dr. Fricchione.

This however does not excuse Respondent's actions. Her refusal to comply with the Board's Order for a psychiatric evaluation is serious misconduct. She has also committed several acts of fraud for lying on her military application. The Hearing Committee cautions Respondent about her selective use of language when answering questions about her employment history even when the questions posed are sometimes difficult. The outright four year suspension sends the message that Respondent's pattern of dishonesty and noncompliance to legitimate authority carries stringent consequences for a physician in the State of New York. Furthermore, Respondent is still required to undergo a psychiatric evaluation as the OPMC Order remains in full force and effect. Under the totality of the circumstances, the Hearing Committee concludes that this penalty is commensurate with the level and nature of Respondent's professional misconduct.


ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Second, Third and Fourth of the Specifications of Professional Misconduct, as set forth in the Amended Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED**; and
2. The First and Fifth of the Specifications of Professional Medical Misconduct against Respondent, as set forth in the Amended Statement of Charges (Petitioner's Exhibit #1) are **NOT SUSTAINED**;
3. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** for a period of **SIX (6) YEARS**, said suspension to be **STAYED for the last TWO (2) YEARS of the suspension period**; and
4. Respondent's license shall be placed on **PROBATION** during the last **TWO (2)** years of the suspension period, and she shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order; and
5. Respondent shall submit to a psychiatric evaluation during the first **FOUR (4)** years of the suspension period;

6. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: New York, New York
08 August 2006


MICHAEL R. GOLDING, M.D.
(Chairperson)

ANTHONY CLEMENDOR, M.D.
NEAL J. HURWITZ, ESQ

TO: Claudia Morales Bloch, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
145 Huguenot Street
New Rochelle, NY 10801

Lisa Gail Aptaker, M.D.
50 West 97th Street, Apt. 4G
New York, NY 10025

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
LISA GAIL APTAKER, M.D.

AMENDED
STATEMENT
OF
CHARGES

LISA GAIL APTAKER, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 1, 1999, by the issuance of license number 214070 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent failed to comply with an Order of the New York State Department of Health, State Board for Professional Medical Conduct, dated January 19, 2005, issued pursuant to N.Y. Public Health Law Section 230(7), directing Respondent to submit to a psychiatric examination.
- B. On or about September 1, 2005, Respondent's application for licensure in the State of Florida was denied by Order of the Florida Board of Medicine based on a finding that Respondent engaged in conduct as set forth in Paragraph C and its subparagraphs, below.
- C. On or about June 17, 2003, Respondent submitted an application for licensure with the Florida Department of Health, Board of Medicine. Respondent willfully and knowingly falsely answered questions on that application, to wit:
 - 1. Respondent answered "No" to the question, "Have you ever had any staff privileges denied, suspended, revoked, modified, restricted, placed on probation, asked to resign or asked to take a temporary leave of absence or otherwise acted against by any

facility?"

2. Respondent answered "No" to the question, "Have you ever been asked, or allowed to resign from any facility in lieu of disciplinary action or during any pending investigations into your practice?"

D. On or about April 29, 2004 and, then again, on or about November 17, 2004, Respondent applied for a direct commission in the United States Army. On each occasion and as part of the application process, Respondent completed a Personnel Data Sheet and Security Clearance Application.

1. Respondent willfully and knowingly falsely answered "No" to questions on the Personnel Data Sheet submitted on or about April 29, 2004, to wit:

- a. Have you ever been required to appear before a medical or state regulating authority, regardless of the result, concerning your health status as an impaired, hindered, or otherwise restricted practitioner.
- b. Have you ever had professional privileges denied, withdrawn, or restricted by any health care facility.
- c. Have you ever been asked to resign from a facility or organization staff or professional society.

2. Respondent willfully and knowingly falsely answered "No" to questions on the Personnel Data Sheet submitted on or about November 17, 2004, to wit:

- a. The facts as alleged in paragraph D.1.a, supra.
- b. The facts as alleged in paragraph D.1.b, supra.
- c. The facts as alleged in paragraph D.1.c, supra.

3. Respondent willfully and knowingly falsely answered "No" to questions on the Security Clearance Application submitted on or about November 17, 2004, to wit:

- a. In the last 7 years have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) Or have you consulted with another ^{related} health care provider about a mental health condition. *See T. 293*
- b. Has any of the following happened to you in the last 7 years? - Fired from a job; Quit a job after being told you'd be fired; left a job by mutual agreement after allegations of misconduct; left a job by mutual agreement ^{OK} following allegations of unsatisfactory performance; left a job for other reason under unfavorable circumstances.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraph C, C.1, C.2
2. Paragraph D, D.1.a through D.1.c
3. Paragraph , D.2.a through D.2.c, D.3.a, D.3.b

FORTH SPECIFICATION
FAILURE TO COMPLY WITH AN ORDER

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(15) by failure to comply with an order issued pursuant to N.Y. Pub. Health Law §230(7) as alleged in the facts of the following:



4. Paragraph A

FIFTH SPECIFICATION
APPLICATION FOR MEDICAL LICENSE REFUSED

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d) by having his or her application for a license refused, revoked or suspended by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the refusal of an application for a license would, if committed in New York state, constitute professional misconduct under the laws of New York state [namely N.Y. Educ. Law §6530(2)] as alleged in the facts of the following:

5. Paragraph B

DATED: March 27, 2006
New York, New York

 
ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

Terms of Probation

- 1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).**
- 2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.**
- 3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.**
- 4. If applicable, any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law Section 32].**
- 5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.**
- 6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.**

7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall comply with the Order of the New York State Department of Health, State Board of Professional Medical Conduct, dated January 19, 2005 issued pursuant to N.Y. Public Health Law Section 230(7), directing Respondent to submit to a psychiatric examination. Respondent must complete the evaluation during the period of the four year actual suspension and before the start of the two year probationary period.

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.